

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPEALALTE SIDE

SECOND APPEAL NO.826 OF 2005

Ganpati Yashwant Magar & Ors.	...Appellants.
Vs.	
Shripati Yashwant Magar & Ors.	...Respondents.
....	
Mr. R.S. Apre with Mr. M.S. Lagu for the Appellants.	
Mr. S.G. Deshmukh Respondent Nos.1 and 2.	
.....	

CORAM : DR. D.Y. CHANDRACHUD, J.

December 9, 2005.

P.C.:

From the concurrent findings which have been arrived at by both the Courts below, it is clear that in 1962, the family was joint and the properties were also held jointly. The 7x12 extracts record Gat No.112 which forms the subject matter of dispute in these proceedings, in the joint names of the members of the joint family. The certificate under the Consolidation Act was also issued in the name of Appellant No.1, the original First Defendant, as Karta of the Joint Family.

Appellant No.1 did not step into the witness box to establish that there was a partition in 1955. Original Defendant

No.4 who was the son of Appellant No.1, sought to establish the partition of 1955 and both the Courts below have correctly disbelieved his evidence since it is common ground that he was not born as on that date. Hence, though the receipt and the Kabulayat were formally in the name of the First Appellant, at that time the family was joint and all the properties were held jointly. Since the tenure of the land in question is impartible, the Trial Court did not direct partition of Gat No.112, but an order of injunction has been issued restraining the Defendant from interfering with the possession of the Plaintiff. These findings do not suffer from infirmity and there is no substantial question of law. There is no merit in the Second Appeal which is accordingly dismissed.

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